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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,834

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Johann Manner

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11/30/2010

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1798

MAIL DATE

DELIVERY MODE

11/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,834	Applicant(s) MANNER ET AL.	
	Examiner Cheryl Juska	Art Unit 1798	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2, 2010, has been entered.

Response to Amendment

2. Applicant's amendment filed with the RCE has been entered. Claims 1 and 12 have been amended as requested. Claims 5, 9, and 11 have been cancelled. Thus, the pending claims are 1-4, 6-8, 10, and 12, with claim 12 being withdrawn as non-elected.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 1, the phrase “lyocell type” renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by “type”), thereby rendering the scope of the claim unascertainable.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-4, 6-8, and 10 stand rejected under 35 U.S.C. 103(a) as obvious over US 6,235,392 issued to Luo et al. as set forth in section 2 of the last Office Action (Final Rejection mailed September 2, 2010).

Applicant has amended claim 1 to limit the method to the step of “using of a cellulosic fiber of the lyocell type produced using a dry-wet spinning process.” However, said limitation is insufficient to overcome the standing rejection. Specifically, the recitation to the dry-wet spinning process is not a positive process limitation (e.g., not claiming “a process of dry-wet spinning a lyocell fiber and using said fibers in carpets, etc.”), but merely descriptive of the product employed in the carpets, etc. As such, said limitation is only afforded patentable weight to the extent that said dry-wet process produces a lyocell fiber product. Hence, said limitation is insufficient to overcome the prior art rejection since Luo clearly teaches a lyocell fiber product

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having the claimed titer. Applicant has still not shown that the fibers produced by Luo's method would not possess the claimed V ratio. Therefore, the rejection stands.

Claim Rejections - 35 USC § 102/103

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 6-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 4,246,221 issued to McCorsley.

In the event the “dry-wet spinning process” becomes a positive limitation, the claims are rejected over McCorsley. McCorsley discloses lyocell fibers produced by said dry-wet spinning process, wherein said fibers are suitable for making cellulosic fabrics having properties similar to cotton (abstract, col. 1, lines 15-43, and col. 2, lines 35-65). Working samples A-H have a denier per filament ranging from 5.3-48.7 denier (5.9-54.1 dtex). The spun filaments may be cut into staple length fibers (col. 12, lines 15-22). Fabrics made from the inventive fibers include draperies (i.e., decoration material) (col. 12, lines 22-26).

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Thus, McCorsley teaches the invention of claims 1-4, 6-8, and 10 with the exception of the claimed V ratio. Although the reference does not explicitly teach the V ratio property, it is reasonable to presume that said property is inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., lyocell fiber having the a titer of 6-25 dtex) and in the similar production steps (i.e., dry-wet spinning process) used to produce the lyocell fiber. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed V ratio would obviously have been provided by the process disclosed by McCorsley. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1-4, 6-8, and 10 are rejected as being anticipated by or obvious over the cited prior art.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner can be emailed at cheryl.juska@uspto.gov or the examiner's supervisor, Angela Ortiz can be reached at 571-272-1206. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
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